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7 **CALIFORNIA COALITION FOR WOMEN  
PRISONERS, ET AL.,**

8 Plaintiffs,

9 v.

10 **UNITED STATES OF AMERICA, ET AL.,**

11 Defendants.

12 Case No.: 4:23-CV-04155-YGR

13 **ORDER DENYING MOTION TO DISQUALIFY  
CLASS COUNSEL**

14 Re: Dkt. Nos. 486, 489.

15 Class member Rhonda Fleming moves to disqualify class counsel based upon allegations of  
16 a conflict of interest stemming from counsel's representation of a separate class of individuals in a  
17 separate matter. Having carefully considered the papers submitted and the pleadings in this action,  
18 and for the reasons set forth below, the Court hereby **DENIES** the motion.<sup>1</sup>

19 **I. BACKGROUND**

20 The factual context governing this case is well-known.

21 On February 27, 2025, the Court granted final approval to the parties' negotiated consent  
22 decree, an agreement which provided for a Special Master to ensure all parties' compliance  
23 therewith. (*See* Dkt. No. 473.) That decision rested in part on the Court's explanation in its order  
24 granting preliminary approval that class counsel was "experienced and knowledgeable" and  
25 "actively prosecuted and defended this litigation." (*See id.* at 5-6.) Plaintiffs were not only paid

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27 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court  
28 finds this motion appropriate for decision without oral argument. The Court therefore also denies  
the request for an evidentiary hearing. *See United Com. Ins. Serv., Inc. v. Paymaster Corp.*, 962  
F.2d 853, 858 (9th Cir. 1992) ("Under [Rule 43] which normally governs motions, the trial court  
has wide discretion in deciding whether to admit or deny oral testimony.").

1 significant sums to resolve the dispute, but the parties continue to work diligently to ensure  
2 compliance for class members.

3 On June 23, 2025, Fleming filed a motion to disqualify class counsel, alleging a conflict of  
4 interest in violation of the State Bar of California's Rules of Professional Conduct, specifically  
5 Rule 1.7. (Dkt. No. 486, Motion for Disqualification of Class Counsel ("Mtn.").)<sup>2</sup> Rule 1.7 states,  
6 in relevant part:

7 (a) A lawyer shall not, without informed written consent from each  
8 client . . . represent a client if the representation is directly adverse to  
another client in the same or a separate matter.

9 (b) A lawyer shall not, without informed written consent from each  
10 affected client . . . represent a client if there is a significant risk the  
lawyer's representation of the client will be materially limited by the  
11 lawyer's responsibilities to or relationships with another client, a  
former client or a third person, or by the lawyer's own interests.

12 As alleged, plaintiffs' counsel Rosen, Bien, Galvan & Grunfeld LLP's ("RBGG's") representation  
13 of a class of transgender federal inmates in a separate suit constitutes representation "directly  
14 adverse" to the interests of the instant class members. (Mtn. at 1.) That suit appears to be one in  
15 which plaintiffs, transgender women, challenge an executive order requiring that they be housed in  
16 male prisons. The motion asserts that Fleming feels uncomfortable with the presence of transgender  
17 women in the facility in which she is currently housed (and specifically, in the shower areas of the  
18 prison) and that RBBG's clients in the other matter have "made fun of the class members." (*Id.* at  
19 2-3.) Fleming requests disqualification of class counsel or, at a minimum, that the Court set an  
20 evidentiary hearing to investigate further. Fleming's motion is accompanied by eight class member  
21 declarations and the declaration of one other declarant. (See Dkt. Nos. 489, 489-1.)<sup>3</sup>

22 **II. LEGAL STANDARD**

24 <sup>2</sup> Plaintiff re-filed an identical motion at Dkt. No. 489, containing more supporting  
25 declarations which are identical to earlier-included declarations.

26 <sup>3</sup> The original motion included the declarations of one non-class member and five class  
27 members; the re-filed identical motion added the others. Other than the declaration from the non-  
28 class member, all are identical and express frustration with RBGG and the housing of transgender  
women in the facilities in which the declarations are currently housed. The filing of identical  
declarations generally decreases their reliability.

1        “[T]he Ninth Circuit refers to the local rules of each district when deciding which standards  
2 govern an ethical violation.” *Radcliffe v. Hernandez*, 818 F.3d 537, 541 (9th Cir. 2016). The local  
3 rules for this district, in turn, require compliance “with the standards of professional conduct  
4 required of members of the State Bar of California.” N.D. Cal. Civ. L.R. 11-4(a)(1).

5        *Radcliffe* held, however, that even were the Court to find a conflict under Rule 1.7,  
6 “California law does not require automatic disqualification for simultaneous conflicts of interest in  
7 class actions.” *Radcliffe*, 818 F.3d at 547. The Ninth Circuit there spoke approvingly of a district  
8 court’s decision to balance several interests in analyzing a motion to disqualify class counsel, as  
9 follows:

10        The court must weigh the combined effects of a party's right to counsel  
11 of choice, an attorney's interest in representing a client, the financial  
12 burden on a client of replacing disqualified counsel and any tactical  
13 abuse underlying a disqualification proceeding against the  
14 fundamental principle that fair resolution of disputes within our  
adversary system requires vigorous representation of parties by  
independent counsel unencumbered by conflicts of interest.

15        *Id.* (quoting *William H. Raley Co. v. Superior Court*, 149 Cal.App.3d 1042, 1048, (1983).)

### 16        III. ANALYSIS

#### 17        A. Conflict of Interest

18        Though a finding that a conflict exists would not require automatic disqualification, the  
Court first analyzes the threshold question whether one does indeed exist.

19        Fleming’s core allegation is that RBGG’s representation of transgender women in another  
20 matter is directly adverse to the interests of the Dublin class members and/or materially limits its  
21 ability to represent the Dublin class. The Court disagrees. First, the subject matter of the two suits  
22 indicates alignment of class interests, rather than adversity. RBGG was appointed to represent a  
23 class of adults in custody who faced systematic assault and abuse at the hands of prison facility  
24 staff, which, as RBGGG notes in opposition, comprises a core fear animating the dispute in the  
25 other suit. (*See* Dkt. No. 492, Plaintiffs’ Response to Motion for Disqualification of Class Counsel  
26 (“Oppo.”) at 7-8.)<sup>4</sup>

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27        <sup>4</sup> The Court, of course, takes no position on the merits of RBGG’s other matter.

1       Second, the comments to Rule 1.7 note that the following are the most relevant factors in  
2 identifying a potential conflict:

3       [T]he courts and jurisdictions where the different cases are pending,  
4 whether a ruling in one case would have a precedential effect on the  
5 other case, whether the legal question is substantive or procedural, the  
6 temporal relationship between the matters, the significance of the legal  
7 question to the immediate and long-term interests of the clients  
8 involved, and the clients' reasonable expectations in retaining the  
9 lawyer.

10      Cal. Rules of Prof. Conduct Rule 1.7 cmt. 6 (State Bar of California 2023). Given that the matter in  
11 which Fleming is represented is a closed civil case from one district in which the parties are now  
12 under a consent decree, and the other matter is a live controversy in a separate judicial district,  
13 these factors do not counsel a finding that any conflict exists.<sup>5</sup>

14           **B. *Radcliffe* Factors**

15      Though the Court finds no conflict, it notes that even were it to find one, the *Radcliffe*  
16 factors would not require disqualification.

17      **Right to counsel of choice:** In the context of a class action, the analysis for this factor is  
18 necessarily different. As RBGG notes in opposition, Fleming is not a named plaintiff to this action,  
19 and disqualifying class counsel on the basis of her own personal discomfort with the firm's other  
20 matters risks depriving named plaintiffs or other class members of their own right to counsel of  
21 choice. The Court finds this factor favors RBGG.

22      **Attorneys' interest in representing a client:** RBGG has dedicated countless hours to  
23 litigating this case, and continues to do so in ongoing efforts to ensure compliance with the consent  
24 decree. This factor favors RBGG.

25      **Financial burden on a client of replacing disqualified counsel:** The Court finds this  
26 factor neutral, as class members are not currently paying for RBGG's representation, and would  
27 likely not face a financial burden should they need to find new counsel.

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28           <sup>5</sup> Of note as well is RBGG's assertion that the separate matter involves only fourteen  
plaintiffs. (See Oppo. at 9.) Thus, the other matter is not as far-reaching as Fleming purports it to  
be.

1           **Tactical abuse underlying a disqualification proceeding:** This factor does not apply; it is  
2 intended to ensure the disqualification proceedings themselves do not serve tactical purposes in  
3 litigation. *See Optyl Eyewear Fashion Int'l Corp. v. Style Cos., Ltd.*, 760 F.2d 1045, 1050 (9th Cir.  
4 1985).

5           **Balance:** In this instance, the factors above counsel against disqualification. The Court  
6 notes this is particularly true where, as here, RBGG is tasked with continuing oversight  
7 responsibilities of a matter *already* litigated to completion, involves a substantial record, and where  
8 there is no allegation that the details of the consent decree were impacted in any way by the  
9 representation in the other matter. In sum, *Radcliffe* strongly supports denying the motion.

10           **IV. CONCLUSION**

11           Based on the above, the Court finds neither a conflict of interest in RBGG's representation  
12 of both classes nor that the *Radcliffe* factors would require disqualification even in the face of one.  
13 As such, the motion is **DENIED**.

14           This terminates Docket Nos. 486, 489.

15           **IT IS SO ORDERED.**

16 Date: August 5, 2025

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE